

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
COURTRIGHT CATTLE COMPANY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 83-11

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from Department of Ecology penalty no. DE 83-105 and order no. DE 83-106 came on for hearing before the Pollution Control Hearings Board, Lawrence J. Faulk (presiding) and David Akana at a formal hearing in Moses Lake on June 29, 1983.

Appellant appeared by his attorney, Paul R. White; respondent appeared by Charles W. Lean, Assistant Attorney General. Reporter Joan M. Steichen recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Board makes these

1 FINDINGS OF FACT

2 I

3 Appellant J. C. Courtright owns a cattle feed yard in Warden,
4 Washington. The site has been continuously operated as a cattle feed
5 lot since April, 1960, first as Warden Feed Yard in which J. C.
6 Courtright was a partner, and since 1965 as Courtright Cattle
7 Company. The yard has on hand, approximately 7000 head of cattle, on
8 the average, which are purchased principally from Eastern Washington
9 farmers.

10 II

11 Respondent Department of Ecology (DOE) is a State agency charged
12 with the administration and enforcement of chapter 90.48 RCW.

13 III

14 The Courtright Feed Yard is located next to the Lind Coulee
15 Wasteway in Grant County Washington. Courtright Cattle Company has
16 constructed a number of pollution control facilities to prevent cattle
17 manure and urine from being discharged into Lind Coulee. These
18 facilities consist of berms and drainage pipes to holding pits for his
19 own wastes as well as a drainage culvert (location #5) for 1000 acres
20 lying to the east and south of his feedlot.

21 IV

22 Lind Coulee is not a natural stream. It is for all intents and
23 purposes a drainage ditch used by adjacent farm units to drain run-off
24 water. It contains animal wastes from dairies and farm operations
25 upstream from appellant as well as soil, pesticides, herbicides and
26 other residues from croplands.

1 As a result, the water quality is different than the water quality
2 of a natural stream. The water in Lind Coulee can be so turbid that
3 it is impossible to see the bottom or any fish which may be present.
4 Nevertheless the waters of Lind Coulee are still classified by the
5 Legislature as waters of the state and as such are subject to RCW
6 90.48.080.

7 V

8 Courtright Cattle Company holds National Pollutant Discharge
9 Elimination System (NPDES) Waste Discharge Permit No. WA-004517-9.
10 Condition S1 of that permit reads in part:

11 Feedlot drainage may only be discharged whenever
12 rainfall events, either chronic or catastrophic,
13 cause an overflow of waste water from a facility
14 designed, constructed and operated to contain all
15 waste waters plus the runoff from 1.2 inches of
precipitation occurring in any 24-hour period which
is equivalent to the precipitation from a 10-year,
24-hour precipitation event.

16 Condition G3 of the permit restricts diversions or bypasses from the
17 treatment system. Condition G4 requires notification of DOE of any
18 violations of the permit. Condition G5 requires good operation and
19 maintenance of the treatment system.

20 VI

21 Appellant first received a waste discharge permit in 1973. In the
22 more than nine years since the permit system was instituted, appellant
23 has not received a citation from DOE.

24 The normal procedure for eliminating animal waste is to pump it
25 out of the holding pits and apply it to the land.

26 VII

27 Precipitation records at Grant County Airport (Moses Lake) and at
the Washington State University (WSU) Research Center east of Othello,

1 being the two closest reporting stations, show that between December
2 12, 1982, and December 19, 1982, an average of 1.07 inches of
3 precipitation fell at the two stations during that period.

4 Much of this was in the form of snow. The temperature at Grant
5 County Airport varied between a low of 18° and a high of 48°. The
6 temperature at the WSU Research Center varied between a low of 16°
7 and a high of 52°. On December 20 and 21, when the temperatures
8 from a low of 30° to a high of 39°, an additional .30 inches of
9 rain fell which coupled with the melting snow, created the greatest
10 run-off seen at the feedlot in the 22 years it has been in operation.
11 However, it did not exceed 1.2 inches of precipitation in any 24 hour
12 period and therefore any discharges are not excused by reason of
13 chronic or catastrophic-rainfall event.

14 VIII

15 On December 20, 1982, DOE was notified by the Department of Game
16 of a complaint from a fisherman that a fish kill was occurring in the
17 Lind Coulee, Grant County. DOE staff investigated on December 21,
18 1982, and found that discharges of animal wastes from Courtright
19 Cattle Company's feedlot were entering Lind Coulee via two pipes and
20 two overland flows. One of the pipes was a broken water drain
21 contributing to the discharges. One of the two holding pits, which
22 was not used in the system was inoperable due to a breach in a dike,
23 and some of the berms had been beaten down by the cattle.

24 IX

25 On December 21, 1982, in that portion of Lind Coulee in front of

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 83-11

1 the appellant's feedlot the water was brown and foamy. This condition
2 persisted for nearly a mile downstream from the place where effluent
3 entered Lind Coulee. A sample of Lind Coulee water and the discharge
4 on appellant's land revealed a high chemical oxygen demand and high
5 concentration of solids and total suspended solids. These test
6 results are consistent with the presence of liquid manure. The water
7 upstream from appellant's feedlot was clearer, and samplings showed
8 much lower concentrations of these contaminants.

9 X

10 On December 21, 1982, DOE investigators also discovered a dead
11 trout in Lind Coulee near appellant's feedlot. This fish exhibited
12 the flared gills of fish which die for lack of oxygen. Manure has a
13 high biological oxygen demand which takes oxygen from water depriving
14 aquatic life of it. At stations farther downstream of where the
15 manure effluent entered Lind Coulee, tests showed much lower
16 concentrations of the contaminants listed in Findings of Fact IX.

17 XI

18 On December 21, 1982, appellant ordered his employees to correct
19 the problem. Heavy equipment was used to construct berms and divert
20 the liquid manure flows from Lind Coulee. By the morning of December
21 22, 1982, the discharge into Lind Coulee was stopped. DOE was not
22 notified at the time the discharges were discovered in accordance with
23 provisions of appellant's waste discharge permit.

24 XII

25 On December 22, 1982, Lind Coulee was clearer and electroshocking
26 revealed live fish in the water four miles below the discharge point.

1 Fish carcasses could be seen on the bottom of Lind Coulee immediately
2 below appellant's discharge. Appellant's manure discharges killed
3 fish in Lind Coulee. The question to be decided by this Board is
4 whether the discharge violated the terms of appellant's waste
5 discharge permit.

6 XIII

7 Pictures of Lind Coulee on December 21, 1982, showed the presence
8 of sphaerotilus (bacterial growth) at the upland drainage discharge
9 culvert (location #5) indicating that animal waste had been flowing
10 into Lind Coulee over a period of time.

11 XIV

12 As a result of the heavy rainfall related to the events in
13 question, the cattle, in an attempt to stay dry, broke down or dragged
14 material to fill up the spaces adjacent to the berms with the result
15 that an overflow of animal waste was discharged into Lind Coulee.

16 XV

17 Appellant has no record of previous violations of the statutory
18 prohibition against water pollution, RCW 90.48.080 with which he is
19 now charged. Since January, 1983, appellant has taken further steps
20 to improve his waste handling system.

21 XVI

22 On January 7, 1983, DOE issued order No. 83-106 calling for
23 submission of (1) a report outlining the cause for failure of the
24 existing system to contain the discharge of waste and surface water to
25 Lind Coulee,⁴ (2) a plan and engineering report outlining steps
26 necessary to contain all discharges, including a 25 year 24-hour storm
27

1 event. Appellant objects to a statement in Order DE 83-106 that "This
2 discharge is a violation of NPDES Waste Discharge Permit No.
3 WA-004517-9 and RCW 90.48.080." The statement is in support of the
4 above requirements and is not made to support the civil penalty in
5 Order DE 83-105 as appellant contends. The first of the requirements
6 has been complied with and no issue remains. The second requirement
7 has been partially met by appellant's September 8, 1982, application
8 for a new NPDES permit. The application did not meet the specificity
9 required by WAC 173-240; however, DOE did not identify the inadequate
10 areas.

11 DOE also issued on January 7, 1983, a notice of civil penalty No.
12 83-105 imposing a \$5000 fine for the alleged violation of RCW
13 90.48.080 and NPDES Waste Discharge Permit No. WA-00477-9.

14 XVII

15 On January 31, 1983, appellant appealed DOE order No. 83-106 and
16 civil penalty No. 83-105.

17 XVIII

18 On February 4, 1983, DOE reduced the fine from \$5000 to \$500.

19 XIX

20 Any Conclusion of Law which should be deemed a Finding of Fact is
21 hereby adopted as such.

22 From these Findings the Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 Appellant's discharge of organic matter (manure effluent) on
26 December 21, 1982, tended to cause pollution of waters of this state
27

1 thereby changing the chemical content, color, turbidity and odor of
2 Lind Coulee rendering such waters harmful to fish.

3 II

4 Appellant did not violate G-3 of his waste discharge permit
5 because the effluent did not divert or by pass appellant's treatment
6 works. It simply overflowed the system.

7 III

8 Appellant, by not notifying DOE of the discharge, technically
9 violated G-4 of his waste discharge permit, although DOE had actual
10 notice of the discharge.

11 IV

12 The evidence is evenly balanced in regard to whether appellant
13 adequately maintained his waste disposal system. (Condition G-5 of
14 appellant's waste discharge permit). DOE has the burden of proof on
15 this issue.

16 DOE did not sustain the burden of proof on this issue. Therefore,
17 condition G-5 of appellant's waste discharge permit was not proved to
18 be violated.

19 V

20 The penalty should be suspended because of appellant's clear
21 record over the years in controlling discharges to Lind Coulee.

22 VI

23 It would have been better if DOE had communicated, in a timely
24 fashion, to the appellant the deficiencies in his September 8, 1982,
25 plan for controlling discharges to Lind Coulee.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 83-11

1 Therefore to arrive at a reasonable solution to this matter, DOE
2 should communicate to appellant a list of changes (if any) to
3 appellant's September 8, 1982, plan for controlling discharges to Lind
4 Coulee. Appellant should then submit an engineering report to DOE
5 that complies with paragraph 2 of DOE order No. 83-106. In addition,
6 the berms inside the cattle pens should be protected to prevent cattle
7 from trampling them down.

8 VII

9 Any Finding of Fact which should be deemed a Conclusion of Law is
10 hereby adopted as such.

11 From these Conclusions the Board enters this
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 83-11

ORDER


Civil Penalty No. DE 83-105 imposed by the Department of Ecology
is suspended.

Department of Ecology Order No. 83-106 is affirmed.

DATED this 22nd day of July, 1983.

POLLUTION CONTROL HEARINGS BOARD


LAWRENCE J. FAULK, Member


DAVID AKANA, Lawyer Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 83-11